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Counsel to the Fee Examiner
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7 UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION

9 In re
PG&E CORPORATION,

10 - and -

11 PACIFIC GAS AND ELECTRIC
COMPANY,

12 Debtors.

- 13 ☐ Affects PG&E Corporation
14 ☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

15 * All papers shall be filed in the Lead Case,
No. 19-30088 (DM)
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Bankruptcy Case
No. 19-30088 (DM)
(Lead Case)
(Jointly Administered)

Chapter 11

**MOTION OF THE FEE EXAMINER TO
(i) APPROVE FINAL FEES OF FEE
EXAMINER; (ii) TERMINATE FEE
EXAMINER'S SERVICES; AND (iii)
CONFIRM SURVIVAL OF PRIOR
ORDERS**

Date: March 24, 2021
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17,
450 Golden Gate Avenue
16th Floor
San Francisco, CA
(Telephonic/Video Appearances Only)

Judge: Hon. Dennis Montali

Deadline for Objection: March 17, 2021

1 Bruce A. Markell, the Court Appointed “**Fee Examiner**” in these jointly administered
2 proceedings, hereby submits and requests relief as follows:

3 1. On May 29, 2019, this court originally appointed Professor Bruce A. Markell as the
4 Fee Examiner (“Fee Examiner”) in these cases (Doc# 2267; hereafter, “**Appointment Order**”).

5 2. Since his appointment, the Fee Examiner has reviewed the fees and expenses of 33
6 separate retained professionals. In the aggregate, these retained professionals claimed
7 approximately \$540,324,000 in fees and expenses. The Fee Examiner’s work involved drafting,
8 negotiating and obtaining approval of a Fee Protocol, and thereafter reviewing well over a million
9 lines of data entry with the assistance of 8 individual fee reviewers.

10 3. The Fee Examiner was able to reduce the aggregate amounts claimed by all
11 professionals by approximately \$22,481,000. A detailed chart of the fees, expenses, and
12 reductions appears as Exhibit A to this motion. The aggregate reduction is 4.16% of all claimed
13 fees and expenses. This reduction is in addition to reduced fees and expenses that result from the
14 Protocol’s prohibition of certain billing practices. All reductions were achieved by compromise
15 noticed to all parties in interest. No proposed compromise drew any objection from any creditor,
16 any professional or the Office of the United States Trustee.

17 4. The Fee Examiner’s fees were set by Paragraph 14 of the Appointment Order,
18 which approved and adopted the compensation scheme outlined in the Motion of the United States
19 Trustee for Order Appointing Fee Examiner and Establishing Procedures for Consideration of
20 Requested Compensation and Reimbursement of Expenses (Doc#1370; hereafter, “Motion”), and
21 in the declaration filed by the Fee Examiner in support of the relief requested in the Motion
(Doc#1307-1; hereafter, “**Declaration**”).

5. The Appointment Order approved a flat monthly fee of \$75,000, to be paid as an
administrative expense of the estate, together with a \$25,000 set up fee. From flat fee, the Fee
Examiner was to (and did) pay all relevant expenses related to his duties under the Appointment
Order. The Debtors in these cases have paid this fee promptly each month since the entry of the
Appointment Order.

1 6. As the fee arrangement was for a flat monthly fee, the Fee Examiner did not keep
2 detailed time records of his time. He estimates, however, that he spent no less than 10-15 hours
3 per week on matters related to examining fees and expenses, and during some weeks (after interim
4 applications were filed and for the periods following confirmation with respect to final fee
5 applications), he spent considerably more.

6 7. One expense not related to the monthly fee, and expressly authorized by the
7 Appointment Order, was the employment of professionals. In this case, the Fee Examiner sought
8 and obtained the appointment of Scott H. McNutt as his counsel, and Mr. McNutt has served in
9 that capacity for the entire case. His separate fee application is set for hearing at the same time as
10 this motion.

11 8. Paragraph 14 of the Appointment Order also provided that the Fee Examiner's fees
12 and expenses would be

13 subject to application and review pursuant to section 330 of the Bankruptcy
14 Code, Bankruptcy Rule 2016, *the United States Bankruptcy Court Northern*
15 *District of California Guidelines for Compensation and Expense*
16 *Reimbursement of Professionals and Trustees*, the U.S. Trustee Guidelines,
17 and the Interim Compensation Order. . . . The fees paid to the Fee Examiner
18 for his services shall be determined and charged in accordance with sections
19 327-331 of the Bankruptcy Code and shall not include any success fees.

20 9. Through and including the payment to be received March 1, 2021, the aggregate
21 amount of monthly fees paid to the Fee Examiner will total \$1,720,000. From this, the Fee
22 Examiner has paid approximately \$1,028,000 in related expenses, as shown on Exhibit B to this
23 motion. The largest single expenditure has been the fees paid to Legal Decoder, Inc., the firm
24 hired by the Fee Examiner to initially analyze the fee data. The aggregate fees paid to Legal
25 Decoder, Inc. have been \$774,000.

26 10. There are no fees or expenses related to the Fee Examiner's duties not disclosed or
27 summarized on Exhibit B. The Fee Examiner did not share, or agree to share, any fees earned in
28 this case.

29 11. Given the fixed fee nature of the Fee Examiner's compensation as set forth in the
30 Appointment Order, the Fee Examiner submits that his fees and expenses should be assessed

1 under Section 328 of title 11. That section provides that fixed fees agreed at employment should
2 be confirmed in a final fee application unless “such terms and conditions prove to have been
3 improvident in light of developments not capable of being anticipated at the time of the fixing of
4 such terms and conditions.”

4 12. The Fee Examiner experienced nothing unusual or unanticipated in the
5 performance of his duties under the Appointment Order. The \$75,000 monthly fee was not
6 objected to by any creditor, any party in interest or the Office of the United States Trustee, and
7 was approved by this court without adjustment in the Appointment Order. In short, nothing has
8 come to light or occurred since the entry of the Appointment Order that would make the monthly
9 fee “improvident.”

9 13. To date, no professional, creditor or party in interest has made any claim against
10 the Fee Examiner related to his duties under the Appointment Order. Undoubtedly, that is because
11 of Paragraph 16 of that order which states:

11 “The Fee Examiner, as an officer of the court, and those employed or paid by
12 him with respect to this appointment shall have the maximum immunity
13 permitted by law from civil actions for all acts taken or omitted in the
14 performance of his duties.”

13 14. To avoid any doubt, the Fee Examiner requests a confirmation that this provision
14 retains its vitality, and that this Court retains jurisdiction with respect to any claims related to such
15 provision, after the termination of the Fee Examiner’s duties as anticipated by this Motion.

15 15. The Fee Examiner thus requests that this Court enter its order:

- 16 a. Approving the fees paid through March 1, 2021;
17 b. Terminating the service of the Fee Examiner as of March 31, 2021;
18 c. Requiring the Debtors in this case to cease payments to the Fee
19 Examiner as of March 31, 2021 (with the payment due March 1 being
20 the last payment to be made);
21 d. Confirming the immunity conferred upon the Fee Examiner in
Paragraph 16 of the Appointment Order; and

1 e. Confirming that this Court will have exclusive jurisdiction over any
2 claims or disputes related to or within the scope of Paragraph 16 of the
3 Appointment Order.
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5 DATED: February 24, 2021

SCOTT H. McNUTT

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8 By: /s/ Scott H. McNutt

9 Scott H. McNutt

10 Counsel to the Fee Examiner
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EXHIBIT A

Exhibit A
Fees Requested and Reductions Obtained

Professional	Fees Requested	Expenses Requested	Total Request	Total Reductions
Axiom Advisors	\$400,000.00	\$1,229.91	\$401,229.91	\$145.91
Baker & Hostetler	\$52,035,799.42	\$7,738,395.46	\$59,774,194.88	\$2,228,781.76
Berman and Todderud	\$1,518,054.42	\$5,588.33	\$1,523,642.75	\$49,000.00
Centerview Partners	\$15,625,000.00	\$129,542.53	\$15,754,542.53	\$81,236.01
Clarence Dyer & Cohen LLP	\$914,032.12	\$19,553.77	\$933,585.89	\$27,421.00
Coblentz Patch Duffy & Bass	\$2,797,605.27	\$43,093.82	\$2,840,699.09	\$82,500.00
Covington & Burling	\$714,007.00	\$9,903.14	\$723,910.14	\$20,000.00
Cravath, Swaine, & Moore	\$116,733,043.00	\$27,503,094.16	\$144,236,137.16	\$10,963,204.00
Deloitte & Touche LLP	\$7,880,663.00	\$30,000.35	\$7,910,663.35	\$85,000.00
Development Specialists, Inc.	\$1,780,836.50	\$49,455.22	\$1,830,291.72	\$100,000.00
Dundon Advisers LLC	\$152,954.00	\$5,370.24	\$158,324.24	\$3,000.00
FTI Consulting	\$18,226,516.25	\$140,583.20	\$18,367,099.45	\$230,032.54
Groom Law Group	\$1,311,040.80	\$783.46	\$1,311,824.26	\$60,500.00
Hunton Andrews Kurth	\$4,872,350.20	\$11,256.21	\$4,883,606.41	\$225,000.00
Jenner & Block	\$11,517,007.20	\$79,866.21	\$11,596,873.41	\$225,000.00
Keller & Benvenuto LLP	\$3,441,585.00	\$195,682.81	\$3,637,267.81	\$112,500.00
KPMG	\$18,333,482.93	\$822,358.45	\$19,155,841.38	\$260,000.00
Latham & Watkins	\$3,533,701.00	\$28,306.37	\$3,562,007.37	\$87,500.00
Lazard Freres & Co., LLC	\$31,200,000.00	\$1,093,273.01	\$32,293,273.01	\$200,000.00
Lincoln Partners Advisors LLC	\$22,923,197.63	\$289,667.63	\$23,212,865.26	\$715,000.00
Lynn A. Baker	\$73,080.00	\$0.00	\$73,080.00	\$2,500.00
MacConaghy & Barnier	\$125,595.90	\$364.90	\$125,960.80	\$2,000.00
Milbank	\$28,307,647.25	\$922,318.05	\$29,229,965.30	\$1,461,498.00
Morrison & Foerster	\$3,640,643.07	\$50,309.08	\$3,690,952.15	\$125,000.00
Munger Tolles & Olson	\$41,011,523.90	\$1,534,945.09	\$42,546,468.99	\$1,465,000.00
Pillsbury	\$402,124.80	\$0.00	\$402,124.80	\$20,000.00
PricewaterhouseCoopers LLP	\$36,829,980.90	\$2,304,158.22	\$39,134,139.12	\$650,000.00
Prime Clerk	\$1,082,104.96	\$1,043.27	\$1,083,148.23	\$20,000.00
Simpson Thacher & Bartlett	\$12,331,175.50	\$184,906.45	\$12,516,081.95	\$567,000.00
Steptoe & Johnson	\$1,710,586.88	\$41,417.61	\$1,752,004.49	\$50,000.00
Trident DMG LLC	\$412,500.00	\$28,846.15	\$441,346.15	\$500.00
Weil Gotshal	\$49,972,910.52	\$4,774,316.46	\$54,747,226.98	\$2,344,607.15
Willis Towers Watson	<u>\$445,762.78</u>	<u>\$27,814.85</u>	<u>\$473,577.63</u>	<u>\$18,000.00</u>
Totals:	\$492,256,512.20	\$48,067,444.41	\$540,323,956.61	\$22,481,926.37

EXHIBIT B

Exhibit B
Compensation Analysis
Fee Examiner, Pacific Gas & Electric Company and PG&E Corp.
May 2019 to March 2021

Income:

Monthly Fee Payments	\$1,720,000.00
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Expenses:

Legal Decoder, Inc.	\$774,000.00
Fee Reviewers	\$225,306.19
Rent	\$22,275.00
Electronic Storage	\$2,726.62
Accounting, Billing Software and Miscellaneous	<u>\$3,586.33</u>

Total Expenses:	\$1,027,894.14
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<i>Net Income Before Taxes:</i>	\$692,105.86
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